

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 1190

SPONSOR: Criminal Justice Committee, Comprehensive Planning Committee, Banking and Insurance Committee, and Senator Constantine

SUBJECT: Fire Prevention and Control

DATE: March 10, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Committee Substitute (CS) for Senate Bill 1190 creates a Fire and Emergency Incident Information Program in the Division of State Fire Marshal of the Department of Financial Services, provides powers and duties of the program, and provides authority to adopt rules to implement, administer, manage, maintain, and utilize the program.

The CS creates a Fire and Emergency Incident Information System Technical Advisory Panel and provides for the membership and duties of the panel.

The CS makes it a third-degree felony to use fireworks or pyrotechnic devices in an indoor facility without (1) a fire protection system, or (2) written consent of the owner or operator of the facility and a permit issued by the local authority having jurisdiction to issue the permit. An exception is provided for the manufacture, distribution, wholesale or retail sale, or seasonal sale of fireworks regulated under ch. 791, F.S.

The CS requires the State Fire Marshal to adopt rules for live-fire-training for firefighters, and requires fire training instructors be certified on and after January 1, 2006.

The CS requires that proceeds from property seized under the Florida Contraband Forfeiture Act by the Division of the State Fire Marshal, after any liens have been satisfied, be deposited into the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards. Currently, such proceeds are required to be deposited in the State's General Revenue Fund.

This CS substantially amends ss. 633.171, 633.821, and 932.7055, F.S., and creates s. 633.15, F.S.

II. Present Situation:

The West Warwick, RI Nightclub Inferno

On February 20, 2003, a pyrotechnics display went terribly awry during a concert at *The Station* nightclub in West Warwick, Rhode Island. Fireworks set off during a performance by the rock group *Great White* ignited flammable soundproofing foam that had been installed inside the venue. In less than 3 minutes the building was engulfed in flames and filled with a poisonous cloud of thick black smoke. The nightclub did not have a fire-sprinkler system, the fire-extinguisher nearest to where the blaze started was missing, and fire-inspectors failed to cite the club for placing flammable foam (which one forensics expert estimated contained the firepower of 13 gallons of gasoline) throughout the inside of the structure. The doors of the nightclub violated the fire code, but the club circumvented the law by removing the doors during inspection and then putting them back up. The fire claimed the lives of 100 people that night and injured 200 more.

In response to the Rhode Island tragedy, a number of states revised their fire prevention laws in efforts to make the occurrence of a similar incident less likely. Rhode Island passed stringent new fire-prevention requirements that include mandating sprinklers in almost all public buildings that hold 50 or more persons. Rhode Island also banned the indoor use of pyrotechnics in almost all venues holding under 1,000 people and made violation of the state's permit requirements a felony offense. Other states also toughened their requirements for indoor pyrotechnic displays. For example, New York now requires a permit from a local permitting authority for the use of indoor pyrotechnics, a specified number of fire extinguishing devices on hand, and sets penalties for non-compliance ranging from a class A misdemeanor for a first offense to a class E felony for subsequent offenses.

The Florida Fire Prevention Code

Chapter 633, F.S., contains Florida's laws relating to fire prevention and control. The chapter designates the Chief Financial Officer as the State Fire Marshal and contains various fire prevention standards and procedures. Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule, the Florida Fire Prevention Code, which contains Florida's fire safety laws pertaining to public and private buildings. The Florida Fire Prevention Code incorporates the National Fire Protection Association Standard 1 for fire prevention and other materials mandated by the statute.

Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule, the Florida Fire Prevention Code. The code must contain the most recent editions of National Fire Prevention Association Standard 1 and the Life Safety Code, Pamphlet 101. These provisions in the rule contain standards for use of pyrotechnics 'proximate' to the audience – or in front of or in an enclosed area, such as a building.

To use such pyrotechnics, the rule requires that persons must obtain a permit from the state or local fire marshal. The application must describe in detail the types of pyrotechnics to be used

and the venue where the display shall occur.¹ Permit requirements vary with each location, but the authority having jurisdiction must exercise sound judgment regarding the safety of the production and the qualifications of the pyrotechnic operator.² The local fire official is required to travel to the venue to conduct a walk-through and observe a demonstration of the pyrotechnics (though this requirement can be waived by the local jurisdiction under certain circumstances).³

The Florida Fire Prevention Code also contains the requirements for fire protection systems such as sprinklers. Generally, sprinklers must be installed in any place of assembly with a seating capacity of 300 or more for new buildings and in all existing building that have over 15,000 square feet of space suitable for displays or exhibitions. Sprinklers must be installed in accordance with NFPA Standard 13, which describes how such systems must be installed, the maximum size, source of water supplies, the placement of the sprinkler heads, and similar items.

The penalty for using pyrotechnics without obtaining a permit is a misdemeanor.

Firefighter Training Programs

Section 633.35, F.S., requires the Division of the State Fire Marshal (division) of the Department of Financial Services to establish a firefighter training program to provide basic employment training for firefighters. The division approves (through certification) agencies and institutions to provide the training. Currently, there are 28 such agencies or institutions (community colleges, vocational/technical schools, or agencies of larger counties) throughout the state. To be employed as a firefighter by the state or any local government in the state, with limited exceptions, the firefighter must obtain a certificate from the division.

The division also certifies instructors who teach in these agencies and institutions. However, there is no specific authority in law for the division to adopt rules to provide a certification program for “live fire training” instructors.

In response to recent deaths involving live fire training over the past 2 years, the division has requested authority to adopt rules to provide a certification program for instructors in live fire training.

Disposition of Liens and Forfeited Property

Section 932.7055, F.S., provides for the disposition of property seized by state agencies and agencies of local government. When a seizing agency obtains a final judgment granting forfeiture of real property or personal property, it may:

- Retain the property for the agency’s use;
- Sell the property at public auction or by sealed bid to the highest bidder, except for real property which should be sold in a commercially reasonable manner after appraisal by listing on the market; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.

¹ Florida Fire Prevention Codes 4-1 through 4-5.2. The FFPC incorporates NFPA Standard 1126, “Pyrotechnic before a Proximate Audience” of the 1996 edition.

² Florida Fire Prevention Code 4-1.1

³ Florida Fire Prevention Code 4-4.1

If the forfeited property is subject to a lien, the agency is required to sell the property with the proceeds first being used towards satisfaction of any liens. The seizing agency must use the remaining proceeds to pay any related storage, maintenance, security, cost, and then any court costs incurred in the forfeiture proceeding.

If the seizing agency is a county or municipal agency, the remaining proceeds must be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

If the seizing agency is a state agency, all remaining proceeds are deposited into the State's General Revenue Fund. However, subsection (5) authorizes eleven specific agencies to retain remaining proceeds to be used for various authorized agency uses.

III. **Effect of Proposed Changes:**

Section 1 creates s. 633.115, F.S., which creates a Fire and Emergency Incident Information Program in the Division of State Fire Marshal of the Department of Financial Services. The program establishes and maintains an electronic communication system capable of transmitting fire and emergency incident information to and between fire protection agencies. The program also initiates a reporting system that receives that information; prepares and disseminates annual reports to the Governor, Legislature, fire protection agencies, and upon request, the public; and upon request, provides other states and federal agencies with fire and emergency incident data. The program also adopts rules to implement, administer, manage, maintain, and utilize the program and to establish procedures and a format for each fire protection agency to voluntarily monitor its records and submit reports to the program. The program also establishes an electronic information database, which is accessible and searchable by fire protection agencies.

The Division of State Fire Marshal must consult with the Division of Forestry of the Department of Agriculture and Consumer Services and the Bureau of Emergency Medical Services of the Department of Health to coordinate data, ensure its accuracy, and limit duplication of efforts in data collection, analysis, and reporting.

A Fire and Emergency Incident Information System Technical Advisory Panel is created in the Division of State Fire Marshal to advise, review, and make recommendations to the State Fire Marshal regarding the requirements of s. 633.115, F.S. The panel consists of 15 members: the current 13 members of the Firefighters Employment, Standards, and Training Council; a member from the Division of Forestry appointed by the division director; and a member from the Bureau of Emergency Medical Services, appointed by the bureau chief.

The term "fire protection agency" must be defined by rule of the Division of State Fire Marshall.

Section 2 creates subsection (3) of s. 633.171, F.S., which makes it a third-degree felony to use fireworks or pyrotechnic devices in an indoor facility without (1) a fire protection system, or (2)

written consent of the owner or operator of the facility and a permit issued by the local authority having jurisdiction to issue the permit. Failure to abide by any of these requirements is a third-degree felony offense punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. A third-degree felony carries with it the possibility of up to 5 years imprisonment and up to a \$5,000 fine. Multiple felony convictions also place a violator at risk of an enhanced sentence as a habitual felony offender.

These requirements do not apply to the manufacture, distribution, or sale of fireworks regulated under ch. 791 F.S., if the products are not used in an indoor facility.

Section 3 amends s. 633.821, F.S., to require the State Fire Marshal to adopt rules for live-fire-training for firefighters and for a 40-hour certification program for live-fire-training instructors. This provision also requires the State Fire Marshal to use specified nationally adopted standards in developing such training. Each live-fire-training instructor must be certified and all live-fire-training commenced after January 1, 2006, must be conducted by a certified live-fire-training instructor.

In addition, this provision clarifies that this new requirement does not apply to wildland-training credentialed by the National Wildfire Coordinating Group through the Florida Division of Forestry.

Section 4 amends s. 932.7055(5), F.S., to require that proceeds from property seized under the Florida Contraband Forfeiture Act by the Division of the State Fire Marshal in the Department of Financial Services, after any liens have been satisfied, be deposited in the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards.

Section 5 provides that the CS will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 3 of the CS requires that proceeds from property seized by the Division of the State Fire Marshal, after any liens have been satisfied, be deposited in the Insurance

Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards. Currently, such proceeds are deposited in the State's General Revenue Fund.

The impact on the General Revenue Fund is indeterminate.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 2 requires the Division of the State Fire Marshal to adopt rules for live-fire-training for firefighters, and requires fire training instructors be certified on and after January 1, 2006. The division estimates that each institution will require 1 or 2 certified instructors, for a total of approximately 100 statewide. The division states that they will provide the training free of charge to these institutions and the department can absorb the costs of providing this certification program in their current budget.

The Criminal Justice Impact Conference has not yet reviewed the felony provision of the CS to determine if this provision might have a prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.